

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of. )  
MANUFACTURERS BANK )

For Appellant: Irving I. Axelrad  
Attorney at Law

For Respondent: Crawford H. Thomas  
Chief Counsel

Jack E. Gordon  
Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Manufacturers Bank against a proposed assessment of additional franchise tax in the amount of \$13,827.83 for the income year 1965. Subsequent to the filing of this appeal, appellant paid the proposed assessment and accordingly, pursuant to section 26078 of the Revenue and Taxation Code, the appeal shall be treated as an appeal from the denial of a claim for refund.

During the period in question Guardian Bank was merged into appellant Manufacturers Bank. Subsequently, appellant deducted a \$145,556.17 loss suffered by Guardian, during the year on appeal, pursuant to section 23253 of the Revenue and Taxation Code. Section 23253 was amended in 1965. (Stats. 1965, ch. 641, p. 1987.) The parties agree that the purpose of this amendment was to prohibit the transferee, in a reorganization, from deducting the transferor's losses. The amendment was approved by the Governor and filed with the Secretary of State on June 12, 1965. Section 19 of chapter 641 states: "This act provides for a tax levy within the meaning of Article IV of the Constitution, and shall go into effect immediately." (Stats. 1965, ch. 641, p. 1993.)

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Appellant contends that the amendment applies only to reorganizations which occurred after June 12, 1965, and argues that the transaction in question was completed prior to that date. The Franchise Tax Board contends that application of the amendment is controlled by section 23058 of the Revenue and Taxation Code, which states:

Unless otherwise specifically provided the provisions of any law effecting changes in the computation of taxes shall be applied only in the computation of taxes for income years beginning after December 31st of the year preceding enactment and the remaining provisions of any such law shall become effective on the date it becomes law.

Alternatively, respondent argues that the merger was not completed until after June 12, 1965. Therefore, two issues are presented by this appeal: (1) whether section 23058 governs the application of the amendment and, if not, (2) whether the merger occurred prior to June 12, 1965. Our resolution of the first issue, which is discussed below, eliminates the necessity of considering the second.

Appellant's position is that section 19 of chapter 641, which states that the amendment shall go into effect immediately, indicates that the Legislature has "otherwise specifically provided" and, therefore, section 23058 is inapplicable. However, appellant has failed to distinguish between the effective and operative dates of a statute. (See Callahan v. City and County of San Francisco, 68 Cal. App. 2d 286 [156 P.2d 479].) Section 19 of chapter 641 eliminated the waiting period applicable for the year in question, 90 days after the final adjournment of the Legislature (Cal. Const., art. IV, § 1\*; Gov. Code, § 9600), which would have otherwise preceded the time when the amendment took effect as law, i.e., the effective date.

Section 23058 of the Revenue and Taxation Code supplies an operative date for a tax computation statute. This operative date is determined by reference to the

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\* In 1966 this provision was amended. (See Cal. Const., art. IV, § 8, subd. (c).)

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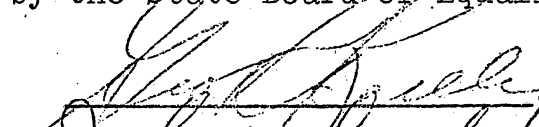
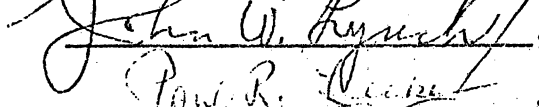
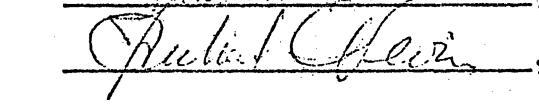
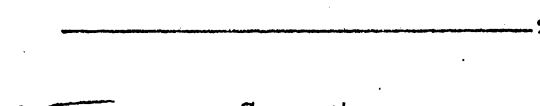
effective date of the statute, but unless the latter date is January 1st, the two dates are different. The Legislature may supersede section 23058 by specifically providing an operative date (see Farmers Underwriters Ass'n v. Franchise Tax Board, 242 Cal. App. 2d 589 [51 Cal. Rptr. 686]), but it has not done so here. We must conclude that the amendment at issue applied to the instant transaction, and therefore appellant's deduction of Guardian's loss was prohibited.

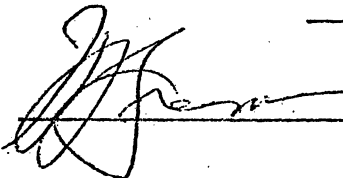
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Manufacturers Bank for refund of franchise tax in the amount of \$13,827.83 for the income year 1965 be and the same is hereby sustained.

Done at Sacramento, California, this 4th day of June, 1970, by the State Board of Equalization.

 Chairman  
 Member  
 Member  
 Member  
\_\_\_\_\_, Member

ATTEST: , Secretary